



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

May 3, 2004

Maria M. Oms
Auditor-Controller
John F. Krattli
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **S. Balasubramaniam v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 158 506

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$475,927.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

The Corrective Action Report is being submitted to you under separate cover.

Return the executed, adopted copy to Georgene Salisbury, Suite 648
Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/gs

Enclosures

MEMORANDUM

April 29, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: JEFFREY M. HAUSMAN, Esq.
Hausman & Sosa

DAVID B. KELSEY
Assistant County Counsel
Management Services Division

RE: S. Balasubramaniam v. County of Los Angeles, et al.
Los Angeles County Superior Court Case No. BC 158506

DATE OF
INCIDENT: March 22, 1994

AUTHORITY
REQUESTED: \$475,927

COUNTY
DEPARTMENT: Department of Health Services

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on _____, 2004

SUMMARY

This is a recommendation to settle this matter, following two trials and numerous appellate proceedings, for the amount of \$475,927. The settlement will resolve the claim against the County by S. Balasubramaniam, M.D. ("Dr. Bala") that he was subjected to racial discrimination in his 1994 non-appointment to the position of Chairman of the Department of Emergency Medicine ("DEM") at Martin Luther King/Drew Medical Center ("MLK/DREW").

LEGAL PRINCIPLES

The County is liable for claims of discrimination in promotional practices. In this case Dr. Bala claims damages arising out of a failure to appoint him to the position of Chair of the DEM in 1994.

When an employee prevails in a lawsuit brought under the Fair Employment and Housing Act ("FEHA"), the employee is entitled to an award of reasonable attorneys fees. In this case, Dr. Bala has received a favorable judgment and also several awards of attorneys fees for different aspects of this case.

A defendant found to be jointly and severally liable for a judgment is subject to payment of the entire amount of the judgment.

PROCEDURAL HISTORY

This matter has been in litigation for nearly ten years, and involves a complex history which includes a Civil Service appeal, a trial before the Superior Court which resulted in a judgment in favor of the County, a reversal following an appeal to the California Court of Appeal, a grant of review by the California Supreme Court, and an intervening landmark decision in the area of administrative law by the Supreme Court. Thereafter, the case was referred back to the Superior Court for a further trial, where there were two subsequent appeals on procedural issues brought by Dr. Bala.

Dr. Bala initially filed an appeal with the Los Angeles County Civil Service Commission ("Commission") in 1994, claiming that the County and Charles R. Drew University of Medicine & Science ("University") subjected him to discrimination in his non-appointment to the position of Chairman of the DEM, at MLK/DREW. Dr. Bala prevailed on his claim, and the Hearing Officer's finding of discrimination was adopted by the Commission as final in January 1996.

At that time, the Commission ordered as the remedy that Dr. Bala be "given a genuine and equal opportunity" for appointment to the permanent chair position at MLK/DREW. After considering the matter, your Board determined not to seek review of the Commission's decision in the Superior Court.

Dr. Bala sued in Superior Court claiming the County and University violated the FEHA in his non-appointment to the position. The case was assigned to Judge David A. Workman and with the parties' agreement was referred to retired Court of Appeal Justice Robert Devich for trial. The University was represented by separate counsel throughout these proceedings.

Following a thirteen day trial, Justice Devich found that there was no discrimination, and judgment was entered in favor of both the County and University. During the hearing, Justice Devich rejected Dr. Bala's argument that the prior determination by the Commission was binding upon the parties.

Thereafter, Dr. Bala appealed the Superior Court decision to the California Court of Appeal. In January 2000, the Court of Appeal issued a published decision reversing the trial court judgment, and finding that the Commission's prior decision was binding. The Court of Appeal held that both the County and University were bound by the Commission's finding of discrimination because the County did not challenge the finding by seeking review in the Superior Court. Moreover, in finding liability, the Court of Appeal remanded the case to the Superior Court for a trial on the sole issue of damages.

In April 2000, both the County and University successfully petitioned the California Supreme Court for review of the Court of Appeal decision. At that time, however, the Supreme Court was considering a separate case, *Johnson v. City of Loma Linda* to determine the effect of an unreviewed administrative decision on subsequent damages litigation. As a result, the Supreme Court ordered that further action on this case involving Dr. Bala be deferred pending a final decision in *Johnson v. City of Loma Linda*.

In August 2000, the Supreme Court rendered a decision in the *Johnson* case, finding that the unreviewed decision of an administrative hearing was binding on the parties in later damage litigation. The Supreme Court declined to take further action in Dr. Bala's case, and in January 2001 remanded the matter to the Superior Court for trial on the issue of damages.

Following remand to Judge Workman, the parties litigated procedural issues in the Superior Court and the Court of Appeal concerning whether Justice Devich could continue as Referee, and whether the Court should enter judgment for payment of attorneys fees. Dr. Bala initiated appellate review of these issues.

Ultimately, Judge Workman ordered that the trial on the issue of damages be heard before a different judicial officer and appointed retired Superior Court Judge Enrique Romero to act as the new Referee in this case.

Several matters were litigated before Judge Romero, including the amount of damages and the attorneys fees and costs to be awarded to Dr. Bala as a result of the prior litigation. Before the trial on Dr. Bala's damage claim commenced, Judge Romero ruled that Dr. Bala was entitled to counsel fees in the amount of

\$73,250.88 against the County and University, for the litigation in the Court of Appeal and the California Supreme Court. This figure was substantially less than that claimed by Dr. Bala. In addition, Judge Romero refused Dr. Bala's efforts to obtain attorney fees in another appellate matter involving procedural issues.

Following a trial on the issue of the amount of damages, on September 2, 2003, Judge Romero awarded Dr. Bala the amount of \$250,000 in emotional distress damages, assessed "jointly and severally" against the County and University. Judge Romero agreed with the County's position that it was not liable for any salary differential (i.e., economic damages). Judge Romero awarded an additional \$127,027.50 for economic damages only against the University, but not the County.

Following the damage award, Dr. Bala submitted a Memorandum of Costs, and also sought additional attorneys fees. The County opposed aspects of this request, which as a result was reduced by Judge Romero.

PROPOSED SETTLEMENT

It is proposed to resolve this matter by entering into a settlement with Dr. Bala for the County to pay one-half of the amounts awarded by Judge Romero jointly and severally against the County and University. The County would waive any right of appeal of the various awards for the damages and attorneys fees and cost awards. Under this agreement, Dr. Bala would also agree to waive any right of appeal, and to accept a one-half share of the total amount jointly awarded against the County and University. Otherwise, Dr. Bala would be entitled to seek the full amount from the County. The University is not a party to this settlement. The University will remain potentially liable for the economic damages awarded against it, as well as the remaining half of the general damages, cost and fees.

Accordingly, the total amount to be paid under this settlement is as follows:

<u>AWARD TO DR. BALA</u>	<u>ONE-HALF SHARE OF AWARD</u>
Fees and costs awarded on first appeal: \$73,250.88	\$36,625.44
Award for general damages: \$250,000	\$125,000.00
Attorneys fees awarded for both trials and Civil Service hearing: \$614,564.72	\$307,282.36
Cost awarded for retrial: \$14,038.40	\$7,019.20
TOTAL	<u>\$475,927.00</u>

EVALUATION

This proposed settlement agreement between Dr. Bala and the County has been reached after years of litigating this case. Also, the amount of the award includes attorneys fees for two trials. Initially, the County was successful during the first of those two trials, until the case was reversed by the Court of Appeal. Nevertheless, at the time of the second damage trial, Judge Romero reduced the scope of the plaintiff's action and therefore the amount of his damage claim over Dr. Bala's objections. Accordingly, Dr. Bala could pursue an appeal regarding those issues, if he were to choose to do so.

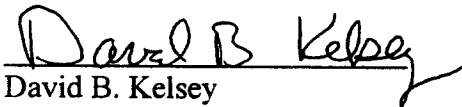
As a matter of procedure, Dr. Bala could enforce the entirety of the "joint and several" portion of the judgment against the County, for the full amount of \$951,854.00. By accepting one-half of this principal amount, Dr. Bala has agreed to waive the right to seek enforcement of the full award against the County. In addition, by accepting this amount Dr. Bala waives any right to prejudgment interest, which could be awarded by the Superior Court. Finally, by accepting this settlement, the County can save future costs and attorneys fees related to continued litigation.

The County's attorneys fees to date are \$254,531.07 and its costs are \$73,487.95.

RECOMMENDATION

We join with the Department of Health Services in recommending this settlement, which is in the best interest of the County.

APPROVED:



David B. Kelsey
Assistant County Counsel